

## Comptroller of the Currency, Treasury

## § 5.64

and obtain the prior written approval of the OCC before changing the composition of all, or substantially all, of its assets (i) through sales or other dispositions, or, (ii) having sold or disposed of all or substantially all of its assets, through subsequent purchases or other acquisitions or other expansions of its operations.

(2) In determining whether to approve an application under paragraph (c)(1) of this section, the OCC will consider the purpose of the transaction, its impact on the safety and soundness of the bank, and any effect on the bank's customers. The OCC may deny the application if the transaction would have a negative effect in any of these respects. The OCC's review of any change in asset composition through purchase or other acquisition or other expansions of its operations under paragraph (c)(1)(ii) of this section will include, in addition to the foregoing factors, the factors governing the organization of a bank under § 5.20.

(d) *Exceptions to Rules of General Applicability.* Sections 5.8, 5.10, and 5.11 do not apply with respect to applications filed pursuant to this section. However, if the OCC concludes that an application presents significant or novel policy, supervisory, or legal issues, the OCC may determine that some or all of the provisions of §§ 5.8, 5.10, and 5.11 apply.

[69 FR 50297, Aug. 16, 2004]

### Subpart E—Payment of Dividends

#### § 5.60 Authority, scope, and exceptions to rules of general applicability.

(a) *Authority.* 12 U.S.C. 56, 60, and 93a.

(b) *Scope.* Except as otherwise provided, the restrictions in this subpart apply to the declaration and payment of all dividends by a national bank, including dividends paid in property. However, the provisions contained in § 5.64 do not apply to dividends paid in stock of the bank.

(c) *Exceptions to the rules of general applicability.* Sections 5.8, 5.10, and 5.11 do not apply to this subpart.

#### § 5.61 Definitions.

For the purposes of subpart E, the following definitions apply:

(a) *Capital stock, capital surplus, and permanent capital* have the same meaning as set forth in § 5.46.

(b) *Retained net income* means the net income of a specified period less the total amount of all dividends declared in that period.

#### § 5.62 Date of declaration of dividend.

A national bank shall use the date a dividend is declared for the purposes of determining compliance with this subpart.

#### § 5.63 Capital limitation under 12 U.S.C. 56.

(a) *General limitation.* Except as provided by 12 U.S.C. 59 and § 5.46, a national bank may not withdraw, or permit to be withdrawn, either in the form of a dividend or otherwise, any portion of its permanent capital. Further, a national bank may not declare a dividend in excess of undivided profits.

(b) *Preferred stock.* The provisions of 12 U.S.C. 56 do not apply to dividends on preferred stock. However, if the undivided profits of the national bank are not sufficient to cover a proposed dividend on preferred stock, the proposed dividend constitutes a reduction in capital subject to 12 U.S.C. 59 and § 5.46.

#### § 5.64 Earnings limitation under 12 U.S.C. 60.

(a) *Definitions.* As used in this section, the term “current year” means the calendar year in which a national bank declared, or proposes to declare, a dividend. The term “current year minus one” means the year immediately preceding the current year. The term “current year minus two” means the year that is two years prior to the current year. The term “current year minus three” means the year that is three years prior to the current year. The term “current year minus four” means the year that is four years prior to the current year.

(b) *Dividends from undivided profits.* Subject to 12 U.S.C. 56 and this subpart, the directors of a national bank may declare and pay dividends of so much of the undivided profits as they judge to be expedient.

(c) *Earnings limitations under 12 U.S.C. 60—(1) General rule.* For purposes of 12 U.S.C. 60, unless approved by the OCC